

This letter briefly describes the Manufacturing Machinery & Equipment exemption and the Pollution Control Exemption. See, 86 Ill. Admin. Code 130.330 and 130.335. (This is a GIL.)

January 4, 1999

Dear Mr. Xxxxxx:

This letter is in response to your letter dated September 9, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

On behalf of our client COMPANY we are requesting your consideration in a sales tax exemption.

Due to changes in the Illinois State Plumbing Code which is also followed by CITY, COMPANY is being required to make a 'major change in their processing system.'

The required change is in the delivery of the major raw product that COMPANY processes, water being supplied by The CITY.

The change involves a break in the water system. The CITY claims that COMPANY during their processing of the raw water may contaminate The CITY Water Works System.

We base our sales tax exemption request on the following:

- = All the water involved in this break is for COMANY processed system only. None of the water is used for any other reason or purpose.
- = The completed process results in the manufacturing of 'Pure Water.'
- = The finished product is, when complete, sold at the retail level in which sales tax is paid.
- = If COMPANY did not process the water, no changes in the plumbing system would be required.

- = If the required changes are not made, The CITY could shut off the water and in doing so theoretically put COMPANY out of business in CITY.
- = The cost of equipment to make this change is approximately Sixty Thousand Dollars (\$60,000.00).

Thank you for your consideration in this matter and if you have any questions please feel free to contact our office.

Based upon the limited amount of information contained in your letter, we cannot issue the ruling you request regarding whether the equipment or materials qualify for any exemption from sales tax. Your letter does not describe the equipment or materials. We cannot tell what functions the equipment performs or what the exact usage of the equipment or materials will be. The question of whether a particular item qualifies for exemption depends upon how it is used. Even if your description were more specific, as noted above, we cannot issue a binding determination in the context of a General Information Letter. We have set out below some of the exemptions that may have applicability to your situation.

Enclosed is a copy of 86 Ill. Adm. Code 130.330 describing the Manufacturing Machinery and Equipment Exemption. In general, Retailers' Occupation Tax does not apply to sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease.

The manufacturing process is the production of articles of tangible personal property, whether such articles are finished products or articles for use in the process of manufacturing or assembling different articles of tangible personal property by procedures commonly regarded as manufacturing, processing, fabricating, or refining which changes some existing material or materials into a material with a different form, use or name. See subsection (b)(2) of Section 130.330. These changes must result from the process in question and be substantial and significant.

Please note that the fact that particular machinery or equipment may be considered essential to the conduct of the business of manufacturing or assembling because its use is required by law or practical necessity does not, of itself, mean that machinery or equipment is used primarily in manufacturing or assembling. See subsection (d)(2) of Section 130.330.

We have also enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." It is important to note that it has been

the Department's long-standing position that equipment that provides an economic benefit cannot have pollution control as its primary purpose.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Encl.